

HOUSE No. 2342

By Mr. Linsky of Natick, petition of David Paul Linsky and others relative to further regulating the sale of handguns in the Commonwealth. Public Safety and Homeland Security.

The Commonwealth of Massachusetts

PETITION OF:

David Paul Linsky
Mark C. Montigny
Matthew C. Patrick

J. James Marzilli, Jr.
Michael E. Festa
Alice Hanlon Peisch

In the Year Two Thousand and Seven.

AN ACT PROTECTING CHILDREN AND ADULTS FROM UNSAFE HANDGUNS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapter 93A of the General Laws is hereby amended by adding
2 the following section:—

3 **Section 12. (A) Definitions.**

4 For purposes of this section, the following terms shall have the
5 following meanings:—

6 Average group diameter test result:— shall mean the arithmetic
7 mean of three separate group diameter test results taken from a set
8 distance.

9 Combination handle lock:— shall mean a device which precludes
10 the use of the handgun unless the combination tumblers are properly
11 aligned. This device may, for example, have the numbers for the
12 combination tumbler protrude from the handle of the handgun.

13 Educational collector:— shall mean an individual who is properly
14 licensed as a bona fide collector and whose collection is maintained
15 for purposes of display, research, lecturing, demonstration, or histor-
16 ical significance, as opposed to being maintained for personal enjoy-
17 ment and/or possible future profit.

18 Group diameter test result:— shall mean the largest spread in
19 inches between the centers of any of the holes made in a test target
20 after firing five rounds from the handgun in question at the target
21 from a set distance. The ammunition used shall be the type recom-
22 mended by the handgun manufacturer in its user manual, or if none
23 is recommended, any standard ammunition of the correct caliber in
24 new condition.

25 Hammer deactivation device:— shall mean a built-in device (or
26 an extension of the hammer) which allows a user manually to lower
27 the handgun's hammer into a deactivated position, and which must
28 be manually re-toggled in order to re-cock the hammer before the
29 handgun can be fired.

30 Handgun:— shall mean a weapon, designed to be fired by the use
31 of a single hand, from which maybe be fired or ejected one or more
32 solid projectiles propelled via a chemical ignition, and which has:—

- 33 (a) A smooth bore with a barrel less than 18 inches long;
- 34 (b) A smooth bore and an overall weapon length of less than 26
35 inches; or
- 36 (c) A rifled bore with a barrel less than 16 inches.

37 Handgun Drop Test:— shall mean a test in which the handgun in
38 question shall be:—

- 39 (a) Test loaded;
- 40 (b) Set such that the handgun is ready to fire; and
- 41 (c) Dropped onto a solid slab on concrete from a height of one
42 meter from each of the following positions:—
 - 43 1. Normal firing position
 - 44 2. Upside down,
 - 45 3. On grip,
 - 46 4. On the muzzle,
 - 47 5. On either side, and
 - 48 6. On the exposed hammer or striker (or if there is no exposed
49 hammer or striker, then the rearmost part of the firearm).

50 In addition, if the handgun is designed so that its hammer or
51 striker may be set in other positions, the handgun in question shall
52 be tested with the hammer or striker in each such position (but other-
53 wise ready to fire). Alternatively, the tester may use different hand-
54 guns of the same make and model, in similar condition, for the test
55 of each of these hammer/striker/ settings.

56 Handgun Performance Test:— shall mean a test in which the
57 handgun in question shall fire 600 rounds, stopping every 100
58 rounds to tighten any loose screws and to clean the gun (if required
59 by the cleaning schedule in the user manual), and as needed to refill
60 the empty magazine or cylinder to capacity before continuing. For
61 any handgun that loads other than via a detachable magazine, the
62 tester shall also pause every 50 rounds for ten minutes. The ammuni-
63 tion used shall be the type recommended by the handgun manufac-
64 turer in its user manual, or if none is recommended, any standard
65 ammunition of the correct caliber in new condition. A handgun shall
66 pass this test if it:—

- 67 (a) Fires the first 20 rounds without a malfunction, and
- 68 (b) Fires the full 600 rounds with no more than six malfunctions
69 and without any crack or breakage of an operating part of the
70 handgun which increases the danger of injury to the user.

71 Handgun-purveyor:— shall mean any person or entity that trans-
72 fers handguns to a customer located within the Commonwealth of
73 Massachusetts. However, handgun-purveyor shall not include any of
74 the aforementioned if:—

- 75 (a) The person or entity transfers less than five handguns per year,
- 76 (b) The transfer in question is for the purpose of, and does,
77 directly or indirectly, supply law enforcement officials or United
78 States military personnel with handguns for their official duties,
- 79 (c) The transfer in question is for the purpose of, and does,
80 directly or indirectly, supply museums or educational collectors with
81 the handguns in question,
- 82 (d) The transfer in question is undertaken to, and does, result in
83 the surrender of handgun to military or law enforcement personnel,
- 84 (e) The transfer in question is of handguns that qualify as antique
85 firearms as defined in 18 U.S.C. s. 921, or
- 86 (f) The transfer in question is of handguns that are solely designed
87 and sold specifically for formal target shooting competition.

88 Key activated trigger lock:— shall mean a device that when
89 locked in place by means of a key, prevents a potential user from
90 pulling the trigger of the handgun without first removing the trigger
91 lock by use of the trigger lock's key.

92 Load indicator:— shall mean a device which plainly indicates that
93 a cartridge is in the firing chamber within the handgun.

94 Magazine safety disconnect:— shall mean a device that prevents
95 the firing of the handgun when the magazine is detached from the
96 handgun.

97 Make and Model:— shall mean any group of handguns, all of
98 which are made by a manufacture, by the same method and
99 according to the same design pattern and specifications.

100 Make and Model Performance Requirements:— shall mean a test
101 in which three handguns in new condition of the make and model
102 being tested shall each pass the Handgun Performance Test.

103 Make and Model's Average Group Diameter Test Result:— shall
104 mean the arithmetic mean of the results of three Average Group
105 Diameter Tests, each preformed on a different handgun in new con-
106 dition of the make and model being tested.

107 Malfunction:— shall mean any failure to feed, chamber, fire,
108 extract, or eject a round, or any failure to accept or eject a magazine,
109 or any other failure which prevents the handgun, without manual
110 intervention beyond that needed for routine firing and periodic
111 reloading, from firing the chambered round or moving a new round
112 into position so that the handgun is capable of firing the new round
113 properly. Malfunction shall not include a misfire caused by a faulty
114 cartridge whose primer fails to detonate when properly hit by the
115 handgun's firing mechanism.

116 Passive use-limitation device:— shall mean a device that auto-
117 matically resets itself so that an unauthorized user cannot fire the
118 handgun. As an example, a key activated trigger lock is not a passive
119 use-limitation device because it needs to be re-locked manually after
120 its key is used to unlock it; thus the next user can fire the handgun
121 without having to unlock the handgun.

122 Prone to accidental discharge:— shall mean unable to pass the
123 following test:— five handguns in new condition of the make and
124 model in question shall each be subjected to, and none shall dis-
125 charge during, the Handgun Drop Test.

126 Ready to fire:— shall mean loaded, and in a condition such that
127 pulling the trigger (and taking any action that must simultaneously
128 accompany the pulling of the trigger as part of the firing procedure)
129 will fire the handgun.

130 Serial number:— shall mean the number stamped, inscribed, or
131 placed upon a handgun by a handgun-purveyor pursuant to M.G.L. c.
132 269, s. 11E.

133 Solenoid use-limitation device:— shall mean a device which pre-
134 cludes, by use of a magnetically activated relay, the firing of the
135 handgun unless a magnet of the appropriate strength is placed in
136 proximity to the handle of the handgun. Such magnet may be
137 imbedded in a ring which can be worn on the user's gun hand.

138 Test loaded:— shall mean loading each chamber of the handgun
139 in question with an empty case with a primer installed.

140 Transfer:— shall mean sell, rent, or lease. Transfer shall not
141 include a sale to a business entity that is primarily a firearm whole-
142 saler, so long as the sale, by its terms, prohibits the purchaser from
143 reselling the handgun to a handgun retailer or consumer in the Com-
144 monwealth.

145 (B) Unfair or Deceptive Practices. General.

146 (1) It shall be an unfair or deceptive practice for any handgun-
147 purveyor, in conjunction with the transfer (or offer to transfer) of a
148 handgun to a consumer in the Commonwealth, to fail to comply with
149 M.G.L. c. 93A or any other existing local, state, or federal statute,
150 rule or regulation whose implementation serves to protect consumers
151 from unfair and deceptive practices by means including, but not lim-
152 ited to, regulating conditions of sale, precluding sale of products
153 when such sale will place purchasers in violation of the law,
154 demanding the disclosure of information, and ensuring the satisfac-
155 tory condition and non-contraband status of goods proffered for sale.
156 Examples of the above included laws, regulations, and rules that:—

157 (a) Forbid the sale of handguns to juveniles, addicts, or mentally
158 incompetent individuals,

159 (b) Forbid the sale of silencers, armor penetrating bullets, or
160 machine-gun pistols (when possession by purchasers will be
161 unlawful),

162 (c) Forbid participation in any way in the obliteration of serial
163 numbers from handguns prior to sale,

164 (d) Forbid the sale of handguns whose serial numbers have been
165 defaced,

166 (e) Require sellers to keep records of handgun sales,

167 (f) Forbid sellers from delivering or transporting handguns,
168 loaded, or

169 (g) Forbid the delivery of handguns to the custody of a minor.

170 (2) It shall be an unfair or deceptive practice for a handgun-pur-
171 veyor to make material misrepresentations or make false certifica-
172 tions regarding any handgun offered for transfer.

173 (C) Tamper-Resistant Serial Numbers.

174 It shall be an unfair or deceptive practice for a handgun-purveyor
175 to transfer or offer to transfer to any customer located within the
176 Commonwealth any handgun on which the serial number has been
177 placed solely in a location on the handgun that results in the num-
178 ber's susceptibility to eradication. A serial number shall be deemed
179 not susceptible to eradication for purposes of this section if:—

180 (1) It is placed on the interior of the handgun, and the handgun-
181 purveyor provides information regarding the location of the interior
182 serial number to the Office of the Attorney General and other law
183 enforcement officials upon request; or

184 (2) It is placed on the exterior of the handgun in a way that is not
185 visible to the unaided eye, but is visible with the aid of an infrared
186 detector or other device and the handgun-purveyor provides infor-
187 mation regarding the location of the no visible serial number of any
188 method by which this number can be made viewable to the Office of
189 the Attorney General and other law enforcement officials upon
190 request.

191 (D) Sale of Handgun Made From Inferior Materials.

192 It shall be an unfair or deceptive practice for a handgun-purveyor
193 to transfer or offer to transfer to any customer located within the
194 Commonwealth any make and model of handgun that:—(1) Has a
195 frame, barrel, cylinder, side or breechblock:—

196 (a) Composed of any metal having a melting point less than 900
197 degrees F,

198 (b) Composed of any material having an ultimate tensile strength
199 of less than 55,000 pounds per square inch, or

200 (c) Composed of any powdered metal having a density of less
201 than 7.5 grams per cubic centimeter; or

202 (2) Is prone to repeated firing based in a single pull of the trigger,
203 prone to the explosion of the handgun during firing with standard
204 ammunition, or prone to accidental discharge.

205 (3) Subsection (D) shall not apply to any make and model of
206 handgun which satisfies the Make and Model Performance Require-
207 ments. The Attorney General may require that the handgun-pur-
208 veyor, or the entity testing the make and model in question on behalf

209 of the handgun-purveyor, provide a sworn certification verifying that
210 the make and model met the performance requirements. At the
211 Attorney General's discretion, he may, upon 60 days notice, require
212 that any such test be performed again by an independent testing
213 entity chosen by the Attorney General, upon three test guns of the
214 make and model purchased at retail. In such a case, the prior certifi-
215 cation shall be prospectively invalid at the conclusion of the notice
216 period and the make and model in question may henceforth only
217 meet the Make and Model Performance Requirements by obtaining a
218 certification from the independent tester. A handgun-purveyor may
219 resubmit a make and model to the independent tester for testing an
220 unlimited number of times.

221 (E) Sale of Handguns Without Childproofing or Safety Devices.

222 (1) It shall be an unfair or deceptive practice to sell a handgun
223 without a safety device in violation of M.G.L. c. 140, s. 131K.

224 (2) It shall be an unfair or deceptive practice for a handgun-pur-
225 veyor to transfer or offer to transfer to any customer located within
226 the Commonwealth any handgun which does not contain a mecha-
227 nism which effectively precludes an average five year old child from
228 operating the handgun when it is ready to fire; such mechanisms
229 shall include, but are not limited to: raising trigger resistance to at
230 least a ten pound pull, altering the firing mechanism so that an
231 average five year old child's hands are too small to operate the
232 handgun, or requiring a series of multiple motions in order to fire
233 that handgun.

234 (3) It shall be an unfair or deceptive practice for a handgun-pur-
235 veyor to transfer or offer to transfer to any customer located within
236 the Commonwealth any handgun which does not contain a load indi-
237 cator or a magazine safety disconnect.

238 (4) Subsection (E)(2) shall not apply to handguns which have a
239 hammer deactivation device. Subsection (E)(3) applies only to hand-
240 guns that have a mechanism to load cartridges via a magazine.

241 (F) Safety Warning /Disclosures.

242 (1) It shall be an unfair or deceptive practice for a handgun-pur-
243 veyor to transfer or offer to transfer to any customer located within
244 the Commonwealth any handgun unless that handgun is accom-
245 panied by the following warning, provided on a separate sheet of
246 paper included within the packaging enclosing the gun, which, in at
247 least 12 point type, states the following:—

248 “WARNING FROM THE MASSACHUSETTS ATTORNEY
249 GENERAL:—

250 This handgun is not equipped with a device that fully blocks use
251 by unauthorized users. More than 200,000 firearms like this one are
252 stolen from their owners every year in the United States. In addition,
253 there are more than a thousand suicides each year by younger chil-
254 dren and teenagers who get access to firearms. Hundreds more die
255 from accidental discharge. It is likely that many more children sus-
256 tain serious wounds, or inflict such wounds accidentally on others.
257 In order to limit the chance of such misuse, it is imperative that you
258 keep this weapon locked in a secure place and take other steps nec-
259 essary to limit the possibility of theft or accident. Failure to take rea-
260 sonable preventive steps may result in innocent lives being lost, and
261 in some circumstances may result in your liability for these deaths.”

262 Failure to include this warning in the packaging enclosing the gun
263 shall not be a violation of this section if the handgun in question
264 complies with subsection (E)(1) by means of a built in passive use-
265 limitation device including but not limited to a nondetachable sole-
266 noid use-limitation device.

267 (2) It shall be an unfair or deceptive practice for a handgun-pur-
268 veyor to transfer directly to a retail customer located within the
269 Commonwealth without demonstrating how to load, unload, and
270 safely store the handgun, and how to engage and disengage all safety
271 devices on the handgun. This shall include an explanation of the cir-
272 cumstance for which the safety devices are designed to prevent the
273 firing of the handgun. The handgun purveyor shall also note for the
274 retail customer the absence, if any, of the following:— a bad load
275 indicator, a magazine safety disconnect or an internal safety.

276 (3) It shall be an unfair or deceptive practice for a handgun-pur-
277 veyor to transfer to a customer located within the Commonwealth a
278 handgun that has a barrel shorter than three inches, unless the
279 handgun-purveyor discloses the limits of the accuracy of the make
280 and model of the handgun for sale by providing in writing to the cus-
281 tomer (prior to sale) the make and model’s average group diameter
282 test result at seven yards, average group diameter test result at 14
283 yards and, average group diameter test result at 21 yards.

284 (G) Transfer of Used Handguns.

285 (1) Subsection (C) and subsection (E)(2) and (3) shall not apply to
286 the transfer of (or offer to transfer) any handgun that previously had

287 been sold at retail to a consumer and that was manufactured prior to
288 the enforcement date for those provisions.

289 (2) Subsection (F)(3) shall not apply to the transfer of (or offer to
290 transfer) any handgun that previously has been sold at retail to a con-
291 sumer, was manufactured prior to the effective date for subsection
292 (F)(3), and for which the handgun-purveyor discloses the limits of
293 the accuracy of the specific handgun for sale by providing in writing
294 to the customer (prior to sale) the handgun's average group diameter
295 test result at seven yards, average group diameter test result at 14
296 yards, and average group diameter test result at 21 yards.

297 (3) Subsection (D)(2), as it pertains to any make and model prone
298 to accidental discharge, shall not apply to the transfer of (or offer to
299 transfer) any handgun that previously has been sold at retail to a con-
300 sumer, was manufactured prior to the effective date for subsection
301 (D)(2), and for which the handgun-purveyor has preformed the
302 Handgun Drop Test on the handgun in question in fully cocked posi-
303 tion, and on the same handgun (or on other handguns of the same
304 make and model in similar condition) in all other hammer/striker
305 positions, and that there were no discharges during the test.

306 (4) Subsection (D)(1) shall not apply to the transfer of (or offer to
307 transfer) any handgun that previously has been sold at retail to a con-
308 sumer, was manufactured prior to the effective date for subsection
309 (D)(1), and for which the handgun-purveyor provides a sworn certi-
310 fication to the buyer that the specific handgun purchased passed the
311 Handgun Performance Test.

312 (H) Severability.

313 If any section or subsection of this Act shall be held invalid, the
314 validity of the remainder of the Act shall not be affected thereby. If
315 the application of any section or subsection of this Act to any person
316 or circumstance shall be held invalid, the applicability of such
317 section or subsection to any other person or circumstance shall not
318 be affected thereby.

319 (I) Effective Dates.

320 This Act shall take effect as follows:—

321 (1) Subsections (A), (B), (H), (F) (1), and (I) shall apply to acts
322 committed or practices in force as of January 1, 2008.

323 (2) Subsections (D) and (C)(2), (3), and (4) shall apply to acts
324 committed or practices in force as of June 30, 2008.

325 (3) Subsections (C), (E), and (G)(1) shall apply to acts committed
326 or practices in force as of September 30, 2008.